Nos. 86-1380, 86-1424, and 87-469

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

ARKANSAS PUBLIC SERVICE COMMISSION, *et al.*,
Petitioners,

v.

FEDERAL ENERGY REGULATORY COMMISSION,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR MISSISSIPPI INDUSTRIES IN OPPOSITION

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QUESTION PRESENTED

Whether the United States Court of Appeals for the District of Columbia Circuit properly upheld the jurisdiction of the Federal Energy Regulatory Commission to determine cost and capacity allocations in an interstate wholesale power contract among four affiliated utility companies.

STATEMENT PURSUANT TO RULE 28.3

Mississippi Industries was a Petitioner in the Court of Appeals. It was also an intervenor in several of the dockets consolidated by the Court of Appeals.

The Respondent in the Court of Appeals was the Federal Energy Regulatory Commission, which was supported by Petitioner-Intervenors Louisiana Public Service Commission; Jefferson Parish, Louisiana; City of New Orleans, Louisiana; Occidental Chemical Corporation; Georgia Gulf Corporation; and by Intervenors Union Carbide Corporation; Louisiana Power & Light Company; New Orleans Public Service Inc.; Middle South Energy, Inc.; and Middle South Services, Inc.

Other Petitioner-Intervenors in the Court of Appeals were Mississippi Public Service Commission; Mississippi Power & Light Company; Representative Webb Franklin; Edwin Lloyd Pittman, Attorney General of the State of Mississippi; Mississippi Legal Services Coalition; Arkansas and Missouri Congressional Delegations; Arkansas Public Service Commission; Arkansas Power & Light Company; State of Arkansas; Reynolds Metals Company; Cities of Conway and West Memphis, Arkansas; AMAX, Inc.; Missouri Public Service Commission; Arkansas Industries; Representative Wayne Dowdy; Weyerhaeuser Co.; Riceland Foods; and Associated Industries of Arkansas.

PARTIES TO THE PROCEEDING

Mississippi Industries is comprised of Anderson-Tully Co.; Columbus Lumber Co.; Crouse-Hinds Lighting; Great Southern Wirebound Box Co.; Madison Furniture Industries; Chloride, Inc., Automotive Div.; U.S. Axminster; Marathon LeTourneau Co.; Perma "R" Products, Inc.; and Cives Steel Co.

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OPINIONS BELOW

The opinion of the Court of Appeals is reported at 808 F.2d 1525 (App. 1a).[1] On June 24, 1987, the original panel vacated a portion of its earlier decision dealing with the merits of this case in an order reported at 822 F.2d 1103.

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[1] Appendix references are to the Appendix accompanying the petition for a writ of certiorari in Arkansas Public Service Commission v. Federal Energy Regulatory Commission, No. 86-1380 (filed Feb. 20, 1987).

The opinions of the Federal Energy Regulatory Commission ("FERC") and its administrative law judges are listed in the margin.[2]

JURISDICTION

The judgment of the Court of Appeals was entered on January 6, 1987. On April 3, 1987, the full Court of Appeals granted rehearing en banc; on June 24, 1987, the full court vacated its grant of rehearing en banc and the panel granted rehearing. By its order of June 24, 1987, the panel vacated the portions of its opinion of January 6, 1987, from which Judge Bork had dissented, reversed in part FERC's prior decisions, and remanded the case to FERC for reconsideration and explanation of certain issues.

The jurisdiction of this Court has been invoked under 28 U.S.C. § 1254(1) (1982).

STATUTORY PROVISIONS

Part II of the Federal Power Act, 16 U.S.C. §§ 824-824k (1982), is reprinted in full at App. 527a-554a.

Section 201(b)(1) of the Federal Power Act, 16 U.S.C. § 824(b)(1) (1982), provides:

> The provisions of this subchapter shall apply to the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce, but except as provided in paragraph (2) shall not apply to any other sale of electric energy or deprive a State or State commission of its lawful authority now exercised over the

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[2] Middle South Energy, Inc., 31 F.E.R.C. (CCH) ¶ 61,305 (1985) (App. 141a); Middle South Energy, Inc., 32 F.E.R.C. (CCH) ¶ 61,425 (1985) (opinion on rehearing) (App. 97a); Middle South Services, Inc., 30 F.E.R.C. (CCH) ¶ 63,030 (1985) (ALJ initial decision) (App. 223a); Middle South Energy, Inc., 26 F.E.R.C. (CCH) ¶ 63,044 (1984) (ALJ initial decision) (App. 374a).

> exportation of hydro-electric energy which is transmitted across a State line. The Commission shall have jurisdiction over all facilities for such transmission or sale of electric energy, but shall not have jurisdiction, except as specifically provided in this subchapter and subchapter III of this chapter, over facilities used for the generation of electric energy or over facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or over facilities for the transmission of electric energy consumed wholly by the transmitter.

Section 206(a) of the Federal Power Act, 16 U.S.C. § 824e(a) (1982), provides:

> Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that any rate, charge, or classification, demanded, observed, charged, or collected by any public utility for any transmission or sale subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order.

STATEMENT OF THE CASE

This case concerns the jurisdiction of the Federal Energy Regulatory Commission ("FERC" or "Commission") to allocate the electrical output and associated costs of the Grand Gulf Nuclear Generating Unit No. 1 ("Grand Gulf") among four affiliated signatories of a Unit Power Sales Agreement ("UPSA"). Grand Gulf is owned and operated by System Energy Resources, Inc. ("SERI"),[3] a wholly-owned subsidiary of Middle South

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[3] SERI was formerly named Middle South Energy, Inc. prior to a change in corporate name.

Utilities, Inc. ("MSU").[4] Four operating-company subsidiaries of MSU—Arkansas Power & Light Company ("AP&L"), Louisiana Power & Light Company ("LP&L"), Mississippi Power & Light ("MP&L"), and New Orleans Public Service, Inc. ("NOPSI")—purchase power at wholesale from each other and from SERI in interstate commerce. The assets of SERI include the Grand Gulf generating unit and a step-up transformer connecting the generating unit to transmission lines owned by the MSU operating-company subsidiaries.

AP&L was a signatory to every agreement since 1974 concerning the allocation of Grand Gulf among the affiliated MSU operating companies. Since 1974, AP&L has been extensively involved in the planning of Grand Gulf.[5] Moreover, AP&L assumed a continuing financial responsibility for Grand Gulf.[6] However, by the time the UPSA was signed, in June 1982, AP&L's allocation of Grand Gulf was reduced to zero percent. The UPSA was filed with the Commission as an interstate wholesale power contract, and Petitioners do not challenge that the UPSA is a contract governing sales of electricity for resale in interstate commerce.

The Commission also reviewed the third in a series of System Agreements among the four MSU operating companies. The 1982 System Agreement, like the earlier 1951 and 1973 System Agreements, was designed to transfer payments among the operating companies to achieve some equalization of MSU costs. As both the Commission and the court below observed, the UPSA and the 1982 System Agreement are interrelated, and the

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[4] Grand Gulf is 90 percent owned by System Energy Resources, Inc. The percentages applicable to the MSU operating companies discussed herein refer to SERI's share of Grand Gulf.

[5] *See, e.g.*, App. 427a-428a.

[6] *See, e.g.*, the July 1981 Second Amendment to the Availability Agreement; App. 397a-398a.

UPSA is a contract "affecting" the rates of the MSU operating companies under the 1982 System Agreement.[7]

AP&L and Reynolds Metals Company, *et al.*, were active participants in proceedings before the Commission relating to the allocation of Grand Gulf power, as were the agencies which regulate the four MSU operating companies—the Arkansas Public Service Commission ("APSC"), the Louisiana Public Service Commission ("LPSC"), the Mississippi Public Service Commission ("MPSC"), and the City of New Orleans ("CNO"). The FERC found that the UPSA allocation of Grand Gulf power was unjust, unreasonable, and unduly discriminatory pursuant to Sections 205 and 206 of the Federal Power Act ("FPA"),[8] and ordered a new allocation of Grand Gulf Power among the operating companies, including an allocation to AP&L of 36 percent. A panel of the United States Court of Appeals for the District of Columbia Circuit unanimously upheld the Commission's jurisdiction to amend the Grand Gulf power allocations in the UPSA. The 1982 System Agreement was also approved by the Commission with only minor modifications, which approval was affirmed by the court below. *Mississippi Industries v. FERC*, 808 F.2d 1525 (D.C. Cir. 1987).

REASONS FOR DENYING THE WRIT

Petitioners now contend, as they contended before the Commission and before the Court of Appeals, that the Commission lacked jurisdiction to allocate any Grand Gulf power under the UPSA to AP&L because, *inter alia*, (1) the Commission improperly asserted jurisdiction over a generating facility, (2) the Commission improperly compelled a "forced purchase", and (3) the Commission improperly intruded on the jurisdiction of the States.

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[7] Middle South Energy, Inc., 32 F.E.R.C. (CCH) ¶ 61,425, at 61,949-50 (1985), *aff'd sub nom.* Mississippi Industries v. FERC, 808 F.2d 1540 (1987).

[8] 16 U.S.C. §§ 824d and 824e (1982).

The merits of the precise reallocation of Grand Gulf power are not before this Court, but have been remanded to the Commission by the Court of Appeals. The issue of the Commission's jurisdiction to allocate Grand Gulf power to AP&L is the only issue raised by Petitioners. Mississippi Industries respectfully submits that the Commission's jurisdiction to allocate Grand Gulf power to AP&L, as well as to LP&L, MP&L, and NOPSI, by reforming an interstate wholesale power contract pursuant to Sections 205 and 206 of the FPA, is clear and unambiguous.

Five congruent opinions on the instant jurisdictional issue by two FERC Administrative Law Judges, the Commission, and the court below confirm that Petitioners do not present an issue warranting review by this Court. Petitioners can cite no case for the proposition that the FERC lacks jurisdiction to reallocate power sales for resale among four affiliated signatories of an interstate contract. Not only is there no conflict between the decision below and decisions of other Courts of Appeals or decisions of this Court, the Commission's action is in full accord with the applicable statute and relevant precedent. Moreover, this case turns on highly specific facts which make the Commission's jurisdiction abundantly clear.

I. There Is No Basis For Petitioners' Assertion That FERC Improperly Exercised Jurisdiction Over A Generating Facility.

Petitioners assert that the Commission's action runs afoul of Section 201(b) of the FPA because the Commission has exercised jurisdiction over a generating facility, specifically Grand Gulf.[9] The generation facility exception of the FPA provides, in relevant part, "The Commission shall have jurisdiction over all facilities for such transmission or sale of electric energy, but shall not have jurisdiction, except as specifically provided in this sub-

[9] APSC Petition at p. 8; AP&L Petition at p. 5; Reynolds Petition at p. 14.

chapter and subchapter III of this chapter, over facilities used for the generation of electric energy or over facilities used in local distribution. . . ." [10]

First, the Commission has not improperly exercised jurisdiction over a generating facility. No sale or disposition of a generating facility is involved in this case. The APSC states, "The Federal Power Act does not vest in the FERC the jurisdiction to reallocate responsibility for generating facilities among operating companies of a holding company." [11] However, in this case, the responsibility for the ownership and operation of Grand Gulf has not been reallocated—it still resides with SERI.[12] As the APSC itself admits, "[N]o change in ownership resulted from the [Commission's] orders. . . ." [13] Ownership of generation facilities in this case has not been expanded or altered one iota, and the Commission has not trespassed on the statutory exclusion. Thus, what the Commission has done is simply to assert jurisdiction over a sale of power from a generating facility.

Second, although the FPA's generation exclusion limits Commission jurisdiction over the sale of generating plants qua generating plants, the Act specifically provides for Commission jurisdiction over the wholesale sale of power from such plants in interstate commerce.[14] Contrary to the implication of the APSC,[15] this Court has previously addressed this issue. In *Connecticut Light and Power*

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[10] 16 U.S.C. § 824(b)(1) (1982).

[11] APSC Petition at p. 9.

[12] Petitioners did not object to the filing of the UPSA as an interstate wholesale power contract; however, they now contest the modification to that contract of power allocations which resulted from the filing.

[13] APSC Petition at p. 6 n.7.

[14] 16 U.S.C. § 824(b) (1982).

[15] APSC Petition at p. 8.

Co. v. FPC, 324 U.S. 515 (1945), this Court construed the "local distribution" exclusion of the FPA. There, the local distribution facilities were wholly intrastate, and the Court found that they were not jurisdictional. The electricity flowing to the local distribution facilities, in *Connecticut Light & Power*, came from interstate commerce and was subject to federal jurisdiction, although the local distribution facilities themselves were not. By contrast, Grand Gulf electricity is sold from a generating facility into interstate commerce for resale, and the facility itself is jurisdictional because of that sale. In distinguishing the sale of the output of generation facilities found to be jurisdictional in a lower court case [16] from the situation in *Connecticut Light and Power*, the Court noted that the lower court had "recognize[d] the need for the further step of finding that the generating facilities were used as facilities for interstate wholesale sales. . . ." [17] Similarly, in this case, the Commission has jurisdiction over Grand Gulf to the extent interstate wholesale sales are made from the plant.

Third, under the particular facts of this case, the Commission clearly has jurisdiction over interstate wholesale power sales from Grand Gulf because SERI owns jurisdictional facilities quite besides the Grand Gulf generating facility. Under the UPSA, power generated by Grand Gulf is delivered at SERI's step-up transformer. Such a transformer is classified as a transmission facility by the Commission. *Minnesota Power and Light Co.*, 3 F.E.R.C. (CCH) ¶ 61,045 (1978); *Public Service Co. of New Mexico*, 25 F.E.R.C. (CCH) ¶ 62,269 (1982).[18] SERI's ownership of such a facility—which is jurisdictional because it is used for the transmission of electric energy in

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[16] Hartford Electric Light Co. v. FPC, 131 F.2d 953 (2d Cir. 1942), *cert. denied*, 319 U.S. 741 (1943).

[17] 324 U.S. at 528 n.6.

[18] Petitioners do not dispute that SERI is a public utility.

interstate commerce, 16 U.S.C. § 824(b) (1982)—makes SERI a public utility, 16 U.S.C. § 824(e) (1982), subject to the Commission's jurisdiction, 16 U.S.C. §§ 824d and 824e (1982). Irrespective of the Grand Gulf generating facility, the interstate wholesale sale of power under the UPSA, a contract between SERI—a public utility—and the MSU operating companies, is jurisdictional.

II. The FERC Has Clear Jurisdiction To Determine The Just And Reasonable Rate, Charge, Or Contract Of A Public Utility.

As discussed above, SERI is a public utility under the FPA because it owns and operates Grand Gulf, a facility used for the sale of electric energy at wholesale in interstate commerce, and because it owns and operates a step-up transformer, a facility used for the transmission of electric energy in interstate commerce. Indeed, none of the Petitioners contend that SERI is not a public utility under the FPA. As a public utility, SERI's rates, charges, and contracts are subject to modification by the FERC.

Section 206(a) of the FPA [19] provides:

> Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that any rate, charge, or classification, demanded, observed, charged, or collected by any public utility for any transmission or sale subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order.

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[19] 16 U.S.C. § 824e(a) (1982).

To contend, as Petitioners do, that the Commission lacks the authority to modify the UPSA, a contract with SERI signed by all four operating companies including AP&L, is tantamount to contending that the FERC must rubber-stamp every cost allocation contract filed with the Commission. Such a position, if correct, would reduce Commission filings to empty gestures and render the FERC's statutory obligation to "fix" such contracts meaningless.

Petitioners' "forced purchase" argument [20] is pure circumlocution. At issue is an interstate power sale to affiliated wholesale purchasers, all of whom are signatories to the interstate power contract. That AP&L's allocation was reduced to zero percent at the time the contract was signed does not vitiate the power of the Commission to modify the contract when, upon review, it finds the contract unjust and unreasonable. All of the operating companies are involved in MSU system planning, all participated in the decision to build Grand Gulf and allocate its output, and all are signatories to the UPSA. Under the circumstances of this case, there is nothing talismanic or exculpatory about a zero percent, as opposed to some other specific percent, allocation.

Petitioners criticize the opinion of the court below because that court upheld the Commission's jurisdiction to modify the UPSA as a "contract affecting rates." [21] The APSC states, "Pursuant to the same reasoning, the FERC would have to review and approve or alter management decisions on contracts with labor, the purchase of trucks, the purchase of computers or the purchase of office equipment, all of which 'affect' rates." [22] Petitioners' point sweeps too broadly.

First, not only is the UPSA a contract for the wholesale sale of energy in interstate commerce, it is also a

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[20] APSC Petition at p. 20.

[21] 808 F.2d at 1540.

[22] APSC Petition at p. 10 n.8.

contract affecting rates and charges pursuant to Section 206 of the Federal Power Act because it affects the 1982 System Agreement. Because the UPSA is a jurisdictional contract which affects another jurisdictional contract—the 1982 System Agreement—the effect of nonjurisdictional contracts is not relevant to this case.

Second, as the court below recognized, the Commission's authority to order a purchase or sale of power in the context of an historically integrated and centrally planned utility system is well-established.[23] *See Pennsylvania Water & Power Co. v. FPC*, 343 U.S. 414 (1952); *Central Iowa Power Cooperative v. FERC*, 606 F.2d 1156 (D.C. Cir. 1979). Third, although the Commission did not do so in this case, it is well-recognized that the FERC's authority to alter a contract affecting rates extends to allocating all utility costs on a system-wide basis. *See Connecticut Power and Light Co.*, 55 F.P.C. 1986, 1989 (1976); *Georgia Power Co.*, 52 F.P.C. 1343, 1349 (1974). The United States Court of Appeals for the Fourth Circuit has observed that rolled-in costing is a matter of Commission discretion:

> While all of this evidence does suggest a basis for the Commission to order rolled-in costing, it does not compel the conclusion that the Commission must, as a matter of law, consolidate costs for ratemaking purposes. A decision to order roll-in is essentially a matter of Commission discretion. . . .

Nantahala Power and Light Co. v. FERC, 727 F.2d 1342, 1348 (4th Cir. 1984).

Finally, and most importantly, the Commission's modification powers extend not only to rates and to contracts

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[23] The 1951, 1973, and 1982 System Agreements signed by all four operating companies were designed to transfer payments among the operating companies to achieve some equalization of MSU costs.

affecting rates, but to charges.[24] The cost allocations contained in the UPSA are charges to the individual operating companies which the Commission must modify if it finds them to be unjust and unreasonable. The Commission's duty to modify an unjust or unreasonable charge obtains, by the plain language of the statute, irrespective of a contract which "affects" a charge or a rate. Thus, because the language of FPA Section 206 is mandatory, not precatory, fixing the charge to AP&L above zero percent, after a finding that a zero percent charge was unjust and unreasonable, was not only within the Commission's jurisdiction, it was unambiguously required by the statute.[25]

III. The FERC's Action Does Not Trench Upon The States.

Petitioners argue that the States can and should regulate interstate wholesale purchases by individual utilities, contending that any fear of "irreconcilable, 'parochial' actions by the various States" [26] is groundless. First, the States lack the power to regulate interstate wholesale sales of electric energy because such sales are subject to the exclusive jurisdiction of the FERC. *FPC v. Southern California Edison Co.*, 376 U.S. 205, 215-16 (1964); *Arkansas Electric Cooperative Corp. v. Arkansas Public Service Commission*, 461 U.S. 375 (1983); *Pacific Gas & Electric Co. v. State Energy Resources Conservation & Development Commission*, 461 U.S. 190, 205-06 (1983).

Second, as this Court has recently and unanimously affirmed in *Nantahala Power & Light Co. v. Thornburg*,

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[24] The charges in the UPSA are computed by multiplying Grand Gulf rates times the entitlement percentages in the UPSA.

[25] Thus, Reynolds' argument that this Court's decision in FPC v. Conway Corp., 426 U.S. 271 (1976), precludes the Commission's action in this case is incorrect. The Commission's authority to set a just and reasonable interstate wholesale charge is clearly a jurisdictional "area" over which the Commission has plenary authority. *See*, Reynolds Petition at pp. 18-19.

[26] Reynolds Petition at p. 27.

106 S. Ct. 2349 (1986), even the States' jurisdiction over retail rates is circumscribed by Commission-approved wholesale rate or cost allocation determinations. In *Nantahala*, this Court required recognition in retail rates of a FERC-approved wholesale allocation of costs. The underlying cost allocation in the filed contract had been modified by the Commission, as the UPSA was modified by the Commission in this case. This Court stated:

> Once FERC sets . . . a rate, a State may not conclude in setting retail rates that the FERC-approved wholesale rates are unreasonable. A state must rather give effect to Congress's desire to give FERC plenary authority over interstate wholesale rates, and to ensure that the States do not interfere with this authority.

106 S.Ct. at 2357.

Third, Petitioners' concern that "the FERC has ensured that no regulatory body will effectively review the need for the construction of electric generating facilities . . .," [27] and that state prudence reviews will be "meaningless",[28] ignores the statutory scheme. Even though interstate wholesale rate matters are within the jurisdiction of the FERC, the initial decision as to the need for a particular plant is made by the local commission having jurisdiction over the situs of the proposed plant.

Prudence reviews concerning interstate wholesale power production and allocation are made, as they must be, by the FERC, in order to avoid the inevitable duplication and possible conflict of multiple state determinations.[29] All of the local regulatory commissions involved here were active participants before the FERC and had a full and fair opportunity to raise issues of prudence.

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[27] APSC Petition at p. 12.

[28] *Id.* at p. 13.

[29] *See* Appalachian Power Co. v. Public Service Commission of West Virginia, 812 F.2d 898, 905 (4th Cir. 1987).

The participation of these commissions before the FERC is not a matter of "denigrat[ion]" as Petitioners claim,[30] but of comity, efficiency, and law.

Finally, the suggestion that FERC should step aside because "State commissions can coordinate and jointly address problems relating to their respective jurisdictions . . ." [31] does not square with reality. In this, Grand Gulf is the archetype. The internecine litigation [32] spawned by the FERC's decision in this case is proof enough that the states alone cannot effectively regulate on an interstate scale.[33]

IV. There Is No Conflict With Other Circuits Or With Decisions Of This Court.

The issues raised by Petitioners have long been settled. Petitioners can cite no case, either of the Circuit Courts of Appeals or of this Court, which conflicts with

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[30] APSC Petition at p. 13.

[31] Reynolds Petition at p. 27.

[32] *See, e.g.*, Mississippi Power & Light Co. v. State of Mississippi, 107 S.Ct. 3247 (1987); Middle South Energy, Inc. v. Arkansas Public Service Commission, 772 F.2d 404 (8th Cir. 1985), *cert. denied sub nom.* Ratepayers Fight Back v. Middle South Energy, Inc., 106 S.Ct. 884 (1986) (AP&L); New Orleans Public Service, Inc. v. City of New Orleans, 782 F.2d 1236 (5th Cir. 1986), later op., 798 F.2d 858, *cert. denied*, 107 S.Ct. 1910 (1987) (NOPSI); Louisiana Power & Light Co. v. Louisiana Public Service Commission, No. 292,026 (19th Jud. Dist., Parish of East Baton Rouge, La., Oct. 9, 1985) (LP&L).

[33] The additional arguments raised by Petitioners—that the Public Utility Holding Company Act of 1935, 15 U.S.C. §§ 79-79z-6 (1982), bars Commission jurisdiction, APSC Petition at p. 21, and that the *Mobile-Sierra* doctrine's "public interest" standard has not been met, AP&L Petition at p. 5—were amply dealt with by the court below. As that court stated, the SEC itself recognized the FERC's exclusive jurisdiction over the UPSA, 808 F.2d at 1550, and the *Mobile-Sierra* public interest standard is not implicated because the UPSA, by its terms, permits unilateral changes in the contract, 808 F.2d at 1552.

the decision below. The only two cases arguably on point, *Connecticut Light and Power Co. v. FPC*, 324 U.S. 515 (1945), and *Hartford Electric Light Co. v. FPC*, 131 F.2d 953 (2d Cir. 1942), *cert. denied*, 319 U.S. 741 (1943), are fully consistent with the unanimous decision of the United States Court of Appeals for the District of Columbia Circuit on the issue of the Commission's jurisdiction.

CONCLUSION

For the foregoing reasons, Mississippi Industries respectfully submits that the petitions for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit should be denied.

Respectfully submitted,

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